

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA**

RM,		: No. 12-20,380
	Plaintiff	:
		:
vs.		: CIVIL ACTION - LAW
		:
KM,		:
	Defendant	: CUSTODY

ORDER

AND NOW, this 7th day of **December, 2012**, this Order is entered after an argument on December 5, 2012, regarding Mother, KM's Preliminary Objections to the First Amended Complaint in Divorce filed by Father on September 14, 2012, raising a claim for Custody. Mother was represented by Paul Colavecchio, Esquire, and Father, RM, was represented by Patricia Shipman, Esquire.

Mother and Father were married on June 19, 2004. They are the parents of two children: RCM, II, date of birth March 9, 2006; and AEM, date of birth December 20, 2008. At the time of their oldest son's birth, the parties resided in Germany. Husband was on active duty in the military. In June, 2006, Mother and the child moved to Clearfield County, Pennsylvania, to reside with her parents while Husband was deployed. In 2007, Mother and the oldest child resided in Union County, Pennsylvania.

At some point, Father returned from the military and joined Mother and the child¹. When the parties' second child was born on December 20, 2008, the parties resided in Union County, Pennsylvania. In March, 2010, the parties and children moved to Berwick located

in Columbia County, Pennsylvania. In April, 2011, the parties and children moved to Lycoming County, Pennsylvania. In November, 2011, the parents separated, but both continued to reside near each other in Lycoming County, Pennsylvania. Husband filed a Complaint for Divorce on March 14, 2012, in Lycoming County, Pennsylvania. Husband's Complaint did not contain a count for custody. At the end of March, 2012, Mother relocated with the minor children to Clearfield County, Pennsylvania, with her family. The parents worked out a custody arrangement among themselves where Mother had primary physical custody and Father had periods of partial custody with the children. On September 17, 2012, Father filed an Amended Complaint in Divorce which contained a count for custody. Father requested that custody conference be scheduled. Prior to the conference, Mother filed Preliminary Objections to the Complaint objecting to the custody matter being heard in Lycoming County. Father is seeking a partial custody schedule with his sons and also is seeking that Mother be ordered to share transportation of the children between Lycoming County and Clearfield County.

The Uniform Child Custody Jurisdiction Act applies not only to Courts of different states, the Statute "also allocates jurisdiction and functions between and among the Courts of Common Pleas of this Commonwealth". **23 Pa.C.S.A. §5471**. The determination of jurisdiction in a custody dispute is governed by the UCCJEA, which provides, in relevant part:

§ 5421. Initial child custody jurisdiction

¹ the testimony is not clear as to exactly when this occurred

(a) General Rule.-Except as otherwise provided in section 5424 (relating to temporary emergency jurisdiction), a court of this Commonwealth has jurisdiction to make an initial child custody determination only if:

(1) this Commonwealth is the home state of the child on the date of the commencement of the proceeding or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this Commonwealth but a parent or person acting as a parent continues to live in this Commonwealth;

(2) a court of another state does not have jurisdiction under paragraph (1) or a court of the home state of the child has declined to exercise jurisdiction on the ground that this Commonwealth is the more appropriate forum under section 5427 (relating to inconvenient forum) or 5428 (relating to jurisdiction declined by reason of conduct) and:

(i) the child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this Commonwealth other than mere physical presence; and

(ii) substantial evidence is available in this Commonwealth concerning the child's care, protection, training and personal relationships.

(3) all courts having jurisdiction under paragraph (1) or (2) have declined to exercise jurisdiction on the ground that a court of this Commonwealth is the more appropriate forum to determine the custody of the child under section 5427 or 5428; or

(4) no court of any other state would have jurisdiction under the criteria specified in paragraph (1), (2) or (3).

(b) Exclusive jurisdictional basis.—Subsection (a) is the exclusive jurisdictional basis for making a child custody determination by a court of this Commonwealth.

(c) Physical presence and personal jurisdiction unnecessary.—Physical presence of or personal jurisdiction over a party or a child is not necessary or sufficient to make a child custody determination.

23 Pa.C.S.A. §5421.

The child's home state is the preferred basis for determining jurisdiction. McCoy v. Thresh, 862 A.2d 109, 113 (Pa. Super. 2004). The UCCJEA defines "home state" as:

The state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. In the case of a child six months of age or younger, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.

23 Pa. C.S.A. § 5402.

At the time that Father filed his Amended Complaint which included a custody count, Mother and the children had resided in Clearfield County for just shy of six months. Mother and the children moved to Clearfield County at the end of March, 2012. At the time Father filed the Complaint for Custody and requested a hearing on September 14, 2012, Mother and the children had resided in Clearfield County for approximately five and one-half months. Prior to moving to Clearfield County, Mother and the children resided in Lycoming County for approximately one year. Pursuant to 5421(a)(1), Lycoming County was the home county of the children at the time of the filing of the Amended Divorce Complaint.

Pursuant to 23 Pa.C.S.A. § 5427(a), "A court . . . which has jurisdiction under this chapter . . . may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances, and that a court of another [county] is a more appropriate forum." Prior to making a determination that the Court is an inconvenient forum, the Court must first address whether it is appropriate for the court of

another county to exercise jurisdiction. In doing so, the Court must consider all relevant factors including the following enumerated factors:

- (1) whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;
- (2) the length of time the child has resided outside this [county];
- (3) the distance between the court in this [county] and the court in the [county] that would assume jurisdiction;
- (4) the relative financial circumstances of the parties;
- (5) any agreement of the parties as to which [county] should assume jurisdiction;
- (6) the nature and location of the evidence required to resolve the pending litigation, including the testimony of the child;
- (7) the ability of the court of each [county] to decide the issue expeditiously and the procedures necessary to present the evidence; and
- (8) the familiarity of the court of each [county] with the facts and issues in the pending litigation.

23 Pa.C.S. §5427(b)(1)-(8).

The Court will address each of the factors in order. Both parties testified that there has been no domestic violence between them during the course of the marriage; therefore, factor (1) is not relevant to the analysis.

Both parties believe it is approximately a two hour drive from the Courthouse in Lycoming County to Mother's residence in Clearfield County. This matter can be litigated in Clearfield County as easily as it could be litigated in Lycoming County, Pennsylvania. Mother is currently in a financial situation where she is unemployed and relies upon her family to help her make ends meet. Father is likewise currently unemployed and relies upon family to help him make ends meet. It would clearly be a financial burden on either party to have to travel from their home county to the other county to litigate this matter.

The parties have no agreement regarding the transfer of jurisdiction and have, instead, turned to this Court for that determination. At this point, Father is seeking to memorialize his partial custody which he has been exercising without a formal agreement since the parties' separation. It appears that the primary issue that the parties cannot resolve is how transportation will occur. If there were a hearing conducted in this matter, Father's mother, who also lives in Lycoming County, would be called to testify. If this matter were litigated in Clearfield County, Mother's parents would testify. Additionally, the children school and head start in Clearfield County and have extracurricular activities. It is anticipated that these individuals may also be called to testify.

There was no evidence presented as to the ability of the Clearfield County Court to decide this issue expeditiously. It is anticipated, however, that the procedure would be similar to those procedures that occur in Lycoming County.

As there have never been any proceedings before either Lycoming County Court or the Clearfield County Court regarding custody, neither county has any particular amount of familiarity with the case.

Based upon the factual circumstances of this case, the Court believes it is a more convenient forum for this matter to be heard in Clearfield County. Mother and the children resided in Clearfield County for almost six months immediately prior to Father filing his request for custody. At this time, Father is seeking simply to memorialize his partial custody schedule and, therefore, even after a court proceeding in this matter, the children will continue to primarily reside in Clearfield County. It is clear that there are more witnesses in Clearfield County concerning the daily lives of the children.

Pursuant to 23 Pa.C.S.A. §5427(c), the custody proceedings pending currently in Lycoming County are stayed pending a child custody proceeding being promptly commenced in Clearfield County by either party. The statute further permits this Court to impose any other conditions the Court considers just and proper including the filing of a temporary custody order. The Court, therefore, will issue a separate temporary custody order this date to ensure that Father is permitted to continue to exercise partial custody as the parties have done since Mother's relocation to Clearfield County while waiting for the Court proceeding in Clearfield County.

Is therefore ORDERED and DIRECTED that the Praeceptum for Custody Conference filed in Lycoming County is hereby STAYED. The parties are directed to promptly file a custody action in Clearfield County. Pending an order entered by Clearfield County, the parties shall abide by the temporary Custody Order which has been issued by this Court on this date.

By The Court,

Joy Reynolds McCoy, Judge